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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Gary Howard Kidgell,

NO. C 08-01965 JW

Plaintiff,

v.

The County of Santa Clara, et al.,

Defendants.

**ORDER DENYING PLAINTIFF'S
APPLICATION TO PROCEED IN FORMA
PAUPERIS**

Pursuant to 28 U.S.C. § 1915(a), Gary Howard Kidgell ("Plaintiff") has filed an Application to Proceed in Forma Pauperis based on his declaration of poverty.

Title 28 U.S.C. Section 1915(a)(1) provides that "Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor." Section 1915 further states that "such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915.

Although the Ninth Circuit has not directly addressed whether non-prisoners may bring suit in forma pauperis under the 1996 amendment to § 1915(a), other circuits have found that this right still exists. Floyd v. United States Postal Serv., 105 F.3d 274, 275-77 (6th Cir. 1997) (overruled on other grounds); Schagene v. U.S., 37 Fed. Cl. 661, 662 (Fed. Cl. 1997); see also Leonard v. Lacy, 88 F.3d 181, 183 (2d Cir. 1996). In addition, the Supreme Court has held that an in forma pauperis

United States District Court

For the Northern District of California

1 applicant need not be “absolutely destitute to enjoy the benefit of the statute.” Adkins v. E.I. Du
2 Pont De Nemours & Co., 335 U.S. 331, 339 (1948). It is sufficient if an applicant provides an
3 affidavit stating that because of his poverty, he cannot “pay or give security for the costs” of a suit.

4 Id.

5 In this case, Plaintiff declares that his date last date of employment was January 4, 2008.
6 While he was working, his net monthly salary was \$2,120. Over the past twelve months, Plaintiff’s
7 salary accounted to \$17,815 in net income. In the course of self-employment, Plaintiff made an
8 additional \$18,346, bringing his income for this twelve month period to \$33,186. Plaintiff owns a
9 2005 Toyota Tacoma which he financed and makes monthly payments of \$401. Plaintiff’s other
10 monthly expenses amount to \$1,604. Plaintiff’s total annual expenses are \$24,060 per year, leaving
11 Plaintiff with \$9,126 per year, or \$760 per month, in discretionary income. Based on Plaintiff’s
12 declaration, the Court finds that Plaintiff can “pay or give security for the costs” of a suit.

13 Accordingly, the Court DENIES Plaintiff’s Application to Proceed in Forma Pauperis.

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15 Dated: April 25, 2008


16 JAMES WARE
17 United States District Judge

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1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Gary Howard Kidgell
3 687 Grand Coulee Avenue Apt 1
4 Sunnyvale, Ca 94087

5 **Dated: April 25, 2008**

6 **Richard W. Wiking, Clerk**

7 **By:**

8 **Elizabeth Garcia**
Courtroom Deputy